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SUPREME COURT, U.S.

81-5386

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1981

HAL M. ROGERS, Appellant

vs

LARRY JINKS, P. ANTHONY RIDDER
SAN JOSE MERCURY NEWS, ONE DOE,
TWO DOE, THREE,DOE, ET AL.

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

JURISDICTIONAL STATEMENT

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APPEAL FROM UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

JURISDICTIONAL STATEMENT

Hal M. Rogers
In Propria Persona
385 Delmas Avenue
San Jose, Calif. 95126
(408) 292-6621

Pursuant to Rules 13(2) and 15 of the Supreme Court of the United States, HAL M. ROGERS, Appellant, files this statement of the basis on which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the final judgment and order in question and that the Court should exercise such jurisdiction in this case.

OPINIONS BELOW

The Federal District Court Order of Dismissal with prejudice claimed that the Court did not have jurisdiction of this action under Title 28, U.S.C., Section 1332, Diversity of Citizenship.

That the Court lacked jurisdiction of this case under Title 28, U.S.C., Section 1331, Federal Question.

That claims asserted were legally "wholly insubstantial and frivolous."

The Court stated that it did not have jurisdiction under Title 28, U.S.C. Section 2201. Creation of a Remedy.

The Federal District Court of Appeals stated that Rogers' contention is foreclosed by prior decisions and the refusal to entertain jurisdiction was proper.

The District Court properly rejected Rogers' claim of jurisdiction under Title 28, U.S.C. Section 2201. The Declaratory Act is not a jurisdictional statute.

This matter was dismissed with prejudice for lack of subject jurisdiction.

The Court of Appeals rejected Rogers' petition for rehearing.

GROUNDS FOR JURISDICTION OF SUPREME COURT

This appeal arises from a civil action filed for Declaratory Relief, Rule 57 FRCP, Title 28, U.S.C. Section 2201, in the Federal District Court for the Ninth District in San Jose, California on May 18, 1978. This appeal arises from the Order of the Court of Appeals for the Ninth Circuit that was entered on July 6, 1981.

A Stay of Mandate was granted on July 27, 1981 with an extension of time for filing an appeal to the United States Supreme Court to August 16, 1981. A Notice of Appeal to the Supreme Court was filed in the Court of Appeals on August 7, 1981.

The jurisdiction of the Court is invoked under Article III, Section 2.2 of the United States Constitution which states in part that,"...the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

The jurisdiction of the Court is invoked under Title 28, U.S.C. Section 1254(2) in that a direct appeal is sought and such appeal shall preclude review by writ of certiorari at the instance of the appellant, and review of appeal shall be restricted to the federal questions presented.

Cases that sustain this jurisdiction of the Court include; Bradford Electric Light Co. v. Clapper 284 US 221-224 El Paso v Simmons 379 U.S. 497, 501-503.

STATUTES INVOLVED

The statutes cited in the opinions of the lower courts are:
Title 28, U.S.C., Section 1331. Federal question, amount in controversy. (Appendix B-1)
Title 28, U.S.C., Section 1332. Diversity of Citizenship. (Appendix B-2)
Title 28, U.S.C., Section 2201 Creation of Remedy. (Appendix B-3)
Title 28, U.S.C., Section 2202 Further Relief. (Appendix B-4)

These statutes are set forth verbatim in APPENDIX B and consecutively numbered B-1, B-2, B-3, and B-4.

QUESTIONS PRESENTED

The courts below improperly issued dismissal with prejudice and orders without considering thoroughly the questions raised by

the plaintiff/appellant. The questions unresolved are:

Whether a newspaper, under the privileges and immunities granted it under the provisions of the First Amendment, can be required to print articles, "equal in time and space", both pro and con outside its editorial pages on any voting issue to be decided by the electorate.

Whether appellant was denied "due process" of the law during the progress of this suit through the district court and the court of appeals, together with the final orders of the judges, under the Fifth Amandment of the United States Constitution.

Whether the right of the appellant to a trial by jury under the Seventh Amendment of the United States Constitution was denied, despite the fact that this right was requested and never addressed by either court.

Whether the appellant was denied "equal protection of the law" and "due process" that run concurrently with the First Amendment rights as outlined in the provisions of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The facts of the case underlying this appeal follow. An actual controversy existed because the editor/publisher of this newspaper refused to print articles, outside the editorial pages, "equal in time and space" on a propositional issue that was to be voted upon by the electorate. This controversy lasted eighty-four days, dating from March 14, through June 6, 1978.

During the progress of this case through the courts of federal jurisdiction, an attempt was made to vacate these proceed-

ings after the original judge removed himself from the case.

Eight months elapsed before a "status conference" was held. That at the status conference, appropriate orders for a pre-trial conference and trial were never issued. Instead an Order of Dismissal with prejudice was decreed. Due process never occurred.

Under provisions of Rules 38 and 39 FRCP and Title 28, U.S.C. Section 2201 a request for a jury trial was sought. This request was never answered and it was ignored by both courts.

Declaratory Relief was sought under Rule 57 FRCP and Title 28 U.S.C. Section 2201. Damages sought were permissable under this same code section. Appellant answered the question of Diversity of Citizenship under Title 28, U.S.C., Section 1332.

Stage of Proceedings, District Court. 1. Complaint for Declaratory Relief, filed May 16, 1978 raised the following questions: (a) Controversy, request for publication of articles "equal in time and space", (b) Asked for judgment and damages in excess of $5,000 under Title 28, U.S.C., Section 2201.

2. Additional Points & Authorities, filed July 14, 1978. (a) Federal jurisdiction, United States Constitution, (b) Justifiable controversy, (c) Citations in support, (d) Judicial power-jurisdiction, four citations, (e) Diversity of Citizenship one citation, (f) Rule making power, courts-due process, three citations, (g) Standing-Substantial interest-Redress, three citations, (h) Public Forum-Newspapers, Excerpts of commentary of Justice Roberts (1939), The limitations of judicial power, "freedom of speech and press", subsequent punishment, clear and present dangers.

3. Points and Authorities in Support, Filed July 3, 1978.

(a) First Amendment, (b) Voting issue, (c) Additional exhibits in support, (d) Receipt: Payment for ad not run by San Jose Mercury, (e) Speedy hearing request.

Case heard August 11, 1978. Leave to Amend granted.

4. Leave to Amend: Points & Authorities filed September 8, 1978 (a) Jurisdiction, four citations, (b) Declaratory Judgment, nine citations, (c) Freedom of Speech, eleven citations, (d) Fourteenth Amendment, two citations, (e) Trial by Jury, Rule 38 FRCP, (f) Raised amount of damages to $10,000 as permitted by statute.

Stage of Proceedings, District Court of Appeals

1. Notice of Appeal, Filed March 1, 1979. All facts, statutes, constitutional averments that were presented to the District Court were filed with the Court of Appeals in this notice of appeal.

In addition, extensive portions of commentary by Supreme Court Justices, Hugo Black and William Douglas in their dissenting opinions, objections to federal rules of the court and the changes which allowed "pretrial dismissals", the courts' unlimited use of discretionary powers, out of court affidavits and other pretrial dispostions. In their opinions the courts rely on these methods instead of calling for a full-fledged trial to vindicate an honest and substantial case on its merits.

Appellants opening brief to the Court of Appeals again outlined all the facts, statutory provisions and constitutional questions that were pertinent and essential to the case.

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents important and substantial federal

questions hereinafter described. The questions raised and documented entail provisions of the First Amendment, Fifth Amendment, Seventh Amendment and the Fourteenth Amendment to the United States Constitution. The federal questions raised here are substantial and show the nature of the case. The Court rulings are such as to bring this case totally within the jurisdictional provisions relied upon and the cases cited to sustain. The questions raised are so substantial as to require plenary consideration, with briefs on the merits and oral arguments for their resolution.

FEDERAL QUESTIONS

Throughout the progress of this case, appellees' attorneys continuously reiterated paenisms of no federal question or jurisdiction. Appellant disagrees stating that cases arising because of constitutional questions are the realm of the federal courts.

> Cases arising under the Constitution of the United States, acts of Congress or treaties involving their interpretations and application and of which jurisdiction is given to federal courts are commonly described as involving "federal questions" McAllister v St Louis Merchants' Bridge Terminal Railway Co 324 Mo 1005 25 S W 2d 791, 792.

A genuine and substantial controversy encompassing a period of eighty-four days was ongoing at the time this suit was filed and a determination of decision by the courts was necessary to settle this issue. No such event occurred.

> A genuine and substantial controversy arising under the Constitution, a law or treaty of the United States, presented in such form, that the judicial power is capable of acting upon it and so directly involved in a case, that a determination thereof is necessary to a decision. Kansas v Colorado 206 U.S.46, 51 L Ed 956 27 S. Ct.

FIRST AMENDMENT

As this suit progressed through the lower courts, the appellees enjoyed their freedom of the press, but the appellant was denied his freedom of speech.

This First Amendment issue in the case of Rogers v San Jose Mercury-News essentially turns on this point. Can a privately-owned newspaper be required to print "pro" and "con" articles "equal in time and space", outside its editorial pages, concerning a propositional voting issue to be decided upon by the electorate.

Further, the question is whether the privileges and immunities granted publishers of newspapers are corollary to the equal responsibility to inform and educate their readers fairly and without bias on a voting issue that is the "peoples right to know" under the freedom of the press provision of the First Amendment to the Constitution.

As times and conditions relevant to the freedom of the press change so should conditions under which newspapers operate. Today the dissemination of the news bears little resemblance to how news was published 200 years ago or even 50 years ago. The communications revolution, with the advent of radio broadcasting in the 1920's to the introduction of television in the late 1940's has drastically altered the methods gathering and distributing the news.

Newspapers have become big business. Chains of newspapers, national newspapers, national wire services now dominate the news scene and the growing number of one-newspaper cities grows almost weekly witness the demise of the Washington Star the ceasing of publication of Tonight in New York City and the near collapse of

the Philadelphia Bulletin.

The growth of articles syndicated by the Washington Post, the New York Times, the Chicago Sun-Times and the Los Angeles Times that appear almost daily in other metropolitan newspapers, is worthy of note.

The elimination of competing newspapers in most of the large cities in this country, creating one-newspaper centers with large populations, and the concentration of control of radio and television ownership by large newspapers has resulted in some interesting statistics. In the past eighteen years ownership of television stations by newspapers has increased by sixty-five for a total of two hundred and twenty-six owned nationwide in 1981. This is 31% of all television stations operating in the United States. Newspapers own a total of five hundred and seventy-five AM and FM radio stations or 13% of the total radio stations on the air in this country.(Source:Statistical Abstract,Government Printing Office, 1981.)

II

Freedom to publish means freedom for all and not for some.

> Under the First Amendment the public has a right to every man's view and every man has the right to speak them. American Communications Assoc. CIO v. Douds 339 U.S. 382, 94 L.ed. 925.

In a decision of the Supreme Court, the Court held that significant issues of the times be made a public record.

> The First Amendment guaranty of freedom of speech and press is necessary to supply the public need for information and education with respect to the significant issues of the times. Wood v. Georgia 370 U.S. 8 L.ed 2d 569 S.Ct. 1364

Again the Court has stated that,

> The vitality of civil and political institutions in our society depend upon free discussion. Termnielo v. Chicago 237, U.S. 1, 93 L ed. 1131

The freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not.

> Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. Associated Press v. United States 326 U.S. 1,2

In 1964 the Court in a decision titled New York Times v. Sullivan spoke of a profound national committment to the principle "that debate on public issues should be uninhibited, robust and wide-open."

Justice William Douglas nearly fifteen years ago expressing his concern of newspaper monopolies stated,

"Where one paper has a monopoly in an area it seldom presents two sides of an issue. It to often hammers away at one ideological or political line, using its monopoly position not to educate people, not to promote debate, but to inculcate in its readers one philosophy, one attitude - and to make money."

Note.(Excerpted The Great Debates)

Newspapers claim they are "surrogates for the public," but they fail to realize that with this position of trust carries with it a concomitant fiduciary obligation.

> The right of the press to state public things and discuss them, that right as every other right in human society, is subject to the restraints which seperate right from wrongdoing. Toledo Newspaper Co. v. United States 247 U.S. 402 , 62 L ed. 1186, 385 S.Ct. 560

Speaking of the freedom of the press, the Court has stated

> The underlying safeguard of the constitutional provisions for freedom of the press or speech is, "That opinion is free and conduct alone is amenable." Mutual Film Corporation v. Industrial Commission 236 U.S. 230, 59 L ed 55,21-355 C.387

These newspapers have stated, "We will not be measuring column inches and certainly will not be accepting someone else's measurements." (See Exhibit "B" original filing,plaintiff),App,B-7

> The rights of free speech and publication has limitations and is not an absolute right. Koingsberg v. State Bar of California 366 U.S. 36, 6 L ed. 2d 105

In another California case the Court stated that the press should not be restricted except to prevent abuse.

> Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right, is to guarantee that freedom of speech or press shall not be restricted except to prevent abuse. Werner v. So. California Assoc. of Newspapers. 35 Cal 2d 121,216,13 S. Ct. 290

The Court has ruled that on a voting issue a paper can be required to provide "equal space."

> The constitutional guarantee of freedom of the press is not encroached upon by affording appropriate remedies for the abuse of the privilege of free speech. Robinson v. Hotel Restaurant Employees. 35 Idaho 418, 207 P 132, 27 ALR 642

In the plaintiff's letter to defendant editor of March 13, 1978, marked Exhibit "A" , a request was made that "...articles and publicity equal in time and space ..." be printed in both of the newspapers he supervised. This request cannot be construed as "prior restraint" or censorship but simply a request for "fairness" and the "peoples right to know." (App.B-6)

In the case of Patterson v. Colorado 205 U.S. 454,463 (1907) Justice Holmes declared, "But the character of every act depends upon the circumstances in which it was done..." " The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.."

III

EQUAL TIME - THE FAIRNESS DOCTRINE

As newspapers continue to purchase and apply for radio and television licenses to broadcast the news, these same newspapers find themselves subject to the provisions and regulations of the Federal Communications Act (1934) and partiuclarly Title 47 U.S.C. Section 315.

As owners they are required under this section to provide "equal time" as defined under the "fairness doctrine." Hence newspapers in their dissemination of the news via radio and telecast, find that about two-thirds of their news is strictly governed by the Federal Communications Act. Yet newspapers jealously guard their rights under the freedom of the press provisions of the First Amendment, while submitting in their newscasts to the restraints of this Act.

In 1934 when Congress updated the Communications Act and passed this new law, it determination was that these restrictions were necessary because of the "scarcity" of radio channels available.

During the forty seven years since the enactment of the Federal Communications Act, radio station licensees have grown in number while the number of newspapers has declined. In 1981, radio stations now outnumber daily newspapers by a two to one margin. Today there are twenty-five hundred newspapers in existence while forty-three hundred radio stations operate.

Under provisions of the "fairness doctrine" is the requirement that public issues be presented on broadcast stations and that each side must be given fair coverage.

> The fairness doctrine requires broadcasting stations to make reasonable provision for the discussion of controversial issues of public importance and to operate on a basis of overall fairness. Kay v F.C.C., 1970, 443 F 2d 638, 143 U.S.App. D.C. 223.

On the fairness and balancing of public issue programs, the Court has stated

> The "public interest" standard of this chapter which invites reference to principles of U.S.C.A. Const. Amend. 1, does not require broadcasters to accept editorial advertisements. Columbia Broadcasting System, Inc. v. Democratic Nat. Committee, Dist.Col. 1973, 93 S.Ct. 2080, 412 U.S. 94, 36 L.Ed.2d 772.

As the result of a suit brought by the Public Media Center against the F.C.C. because of ads sponsored by the Pacific Gas & Electric Co. in support of nuclear power, the Commission reversed itself and issued new guidelines in September of 1979.

On the question of funding, the Commission ruled that in no instance can a station reject an otherwise suitable presentation on the grounds that it cannot obtain sponsorship.

In applying the "fairness doctrine" the licensee must make good faith judgments as to whether a controversial issue is of public importance and the general public is asked to vote on that issue. (Source: National Association of Broadcasters.L-933.

It is apparent that as newspapers continue to acquire "equal time" facilities and the number of newspapers being published continues to dwindle that the Supreme Court reassess its position on the issue here presented of "equal time" for a voting issue because of the "scarcity" of newspaper outlets.

IV

FIFTH AMENDMENT

DUE PROCESS-PROCEDURAL JURISDICTION

If due process means writs, orders or other writings by which a court exercises its jurisdiction of the legal proceedings in accordance with the law of the land, then appellant was denied his rights during the progress of the case.

Rule 57 FRCP is to be read in conjunction with the Federal Declaratory Judgment Act, Title 28 U.S.C. Section 2201; Creation of a Remedy and Section 2202, Further Relief. Where the stated remedy is not "speedy, efficient or adequate" federal courts may within their discretion grant declaratory relief.

The Federal Declaratory Judgment Act of 1934 provided that "in cases of actual controversy" federal courts could "declare rights and other legal relations of any interested party petitioning for such declaration whether or not further relief is or could be prayed."

> This law in providing remedies and definitive procedure in relation to cases and controversies in the constitutional sense, the Congress is acting within the delegated power over the jurisdiction of the Federal Court. S.Rept No. 1005 73rd Congress 2d Sess 1934.

A Constitutional First Amendment question was raised and supported by fifty exhibits supportive of the facts alleged. These exhibits covered a period of eighty-four days, the duration time of this controversy.

> It was established that the Declaratory Act is restricted to controversies which are such in the constitutional sense. Aetna Life Insurance Co. v. Haworth, U.S. 227 575 S.Ct 461.

Procedural statutes and rules applied in this case were equitable for the relief sought and the judgment asked.

> Since proceedings for declaratory relief have much in common with equitable proceedings, the equitable doctrine of laches has been applied in such proceedings Mock v Higgins, 3 ILL, App. 2d 281, 121 NE2d 865.

Due process must give an opportunity to be heard respecting the justice of the judgment sought.

> In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross examine adverse witnesses. Goldberg v. Kelly 397 US 254, 269 (1970).

Any hearing in a court of law enunciates the principle of justice for everyone.

> Any legal proceeding enforced by public authority, whether sanctioned by age or custom newly devised in the discretion of the legislative power, which regards and preserves these principles of liberty and justice, must be held to be due process of law Hagar v. Reclamation District, ILL, U.S. 701, 708, (1884)

The assuming of jurisdiction in this case was proper

> A declaratory judgment is entirely appropriate and the court may not properly refuse to assume jurisdiction. Consequently the failure of the trial court to exercise its discretionary jurisdiction has been held grounds for reversal of the dismissal of the action. Moss v Moss 20 Cal 2d 640

The following citations clearly show that jurisdiction of the court was proper and refusal an abuse of discretion.

> Thus legal or equitable rights acquired under the laws of the United States may be prosecuted in either the Federal Courts or State Courts Tsang v Kan (CA 9 Cal) 173 F2d 204

This case properly stated that the Court had concurrent jurisdiction.

> Where jurisdiction is concurrent between federal and state courts, the plaintiff has the right to elect the tribunal he will sue in; and if the facts bring the case within its jurisdiction, a federal court must act Los Angeles Ry Corp. v. Railroad Commission (DC Cal) 29 F2d 140

As to a necessary and proper provision for the exercise of the jurisdiction conferred by Article III, Section 2, U.S. Constitution, the Congress may prescribe the effect to be given to judicial proceedings of the federal courts and may make all laws necessary for carrying into execution the judgments of the federal courts.

> It is most true that this Court will not take jurisdiction if it should not, but it equally true that it must take jurisdiction if it should. We cannot pass it up because it is doubtful. With whatever doubts, with whatever difficulties a case may be attended, we must decide it, if it brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp the constitution. Maybury v. Madison 1 Cr. (5 U.S.) 137 (1803)

V

SEVENTH AMENDMENT - TRIAL BY JURY

Under the provisions of the Seventh Amendment, U.S. Constitution, the right to a trial by jury is granted where the value in controversy exceeds twenty dollars as set forth verbatim.

> Seventh Amendment (Section 1) In suits of common where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the 1791 rule of common law.

The right to a trial by jury is to be scrupulously preserved for Rule 57 FRCP expressly provides that the "right may be demanded under the circumstances and in a manner provided in the

Rule 38 and Rule 39 FRCP. The right to a trial by jury is determined by the basic nature of the issues."

> The act (declaratory judgment) is a remedial statute and is to be liberally interpreted bearing in mind the legislative purpose. Dewey & Almy Chemical Co. v. American Anode CCA 333 3d (1943)

The dismissal of this case in a pretrial hearing effectively denied the appellant any trial as had been requested.

VI

FOURTEENTH AMENDMENT - EQUAL PROTECTION

The equal protection guaranty is intended to secure equality of protection, not only for all but against all similarly situated.

The laws to which the Fourteenth Amendment's guaranty of equal protection has reference do not relate to abstract units, but are expression of policy arising out of specific difficulties addressed to the attainment of specific ends by the use of specific remedies.

In this case the Court used Title 28 U.S.C.,Section 1331 (Appendix B-1) to deny that a federal question existed, although the questions raised concerning Constitutional Amendment No 1.were constitutional questions.

> The organic principle of equality includes wihtin its application, a granted privilege as well as a regulated right. Equality of benefit is required no less than equality of burden. Rosenblum v. Griffin 89 NH 314, 197 A 701, 115 ALR 367

The theory underlying constitutional requirements of equality is that all persons in like circumstances must be treatalike, both as to privilege conferred and as to liabilities or burdens imposed.

The implied power of the Federal government is evident in constitutional questions.

> Although based upon delegated and enumerated powers it is universally recognized that that which is implied in the Constitution is as much a part of it as that which is expressed. International Shoe Co. v. Pinkus 278 U.S. 261, 73 L ed. 318, s.Ct. 108

The question of Diversity of Citizenship was raised by the appelles, under Title 28, U.S.C., Section 1332 (Appendix B-2)

Pursuant to Rule 201 of the Federal Rules of Evidence states that any common citizenship of any plaintiff and defendant negates diversity of citizenship. Appellant here submits form letter exhibit (Appendix B-8) to prove that appellees contention of common citizenship is in error.

The above-numbered form letter from the office of the California Secretary of State indicates that as of May 23, 1978, the San Jose Mercury-News, newspapers owned by the Knight-Ridder Publications of Miami Florida,was not incorporated in the State of California.

The Suability doctrine of foreign corporations enunciates the "presence" status and the suability of such corporations.

> In the absence of consent, a foreign corporation is amenable to process to enforce a personal liability only if it is doing business within the state in such a manner and to such extent as to warrant the infer- that is present there. Philadelphia & Reading Ry. Co. v. McKibbon 243, U.S. 264, 265 (1917)

It is evident from the arguments presented and the case citations stated, that the appellant was denied the equal protection of the laws as well as due process under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

From the reasons stated above appellant submits that the appeal brings before the Court substantial and important constitutional as well as federal questions which require plenary consideration, with brief on the merits and oral argument for their resolution.

Dated Sept 5, 1981.

Respectfully submitted

HAL M. ROGERS
In Propia Persona

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ON APPEAL FROM THE UNITED STATES COURT OF APPEAL

NINTH CIRCUIT

APPENDCIES

LIST OF APPENDICES

APPENDIX A

MEMORANDUM, AFFIRMED: District Court of Appeal March 26,81

APPENDIX B: VERBATIM TEXT OS STATUTES AT ISSUE
28 USC 1331 B-1
28 USC 1332 B-2
28 USC 2201 B-3
28 USC 2202 B-4
Rule 57 FRCP B-5
B-6 LETTER Appellant to L,Jinks,San Jose Mercury 3/13/78
B-7 LETTER L.Jinks to Appellant 3/14/78
B-8 LETTER (Form) Secty of State,Calif. March 23,1978

APPENDIX C MOTION FOR STAY OF ORDER to Court of Appeals 7/16/81
AFIIDAVIT IN SUPPORT OF MOTION 7/16/81
STAY OF MANDATE Granted Court of Appeal 7/27/81
STATUS CONFERENCE District Court (2pp) 12/12/78
VACATE ORDER & REASSIGNEMTN District Court 11/21/78
ORDER LEAVE TO AMEND August 17,1978
(Jan.31 1979

APPENDIX D ORDER OF DISMISSAL WITH PREJUDICE District Court

APPENDIX E PETITION FOR REHEARING DENIED District Court of Appeals July 6th,1981

APPENDIX F NOTICE OF APPEAL TO THE SUPRME COURT OF UNITED STATES Filed in Court oa Appeals AUGUST 7th,1981
MOTION FOR CORRECTION OF ERROR In APPEAL TO THE UNITED STATES COURT NOTICE to Court of Appeals Dated August 20th,1981

FILED

MAR 26 1981

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAL M. ROGERS, Plaintiff-Appellant, v. LARRY JINKS, P. ANTHONY RIDDER, SAN JOSE MERCURY, San Jose News, et al., Defendants-Appellees.	No. 79-4190 D.C. No. C 78-1074-SW (SJ) MEMORANDUM

Appeal from the United States District Court
for the Northern District of California
Spencer Williams, District Judge, Presiding
Submitted December 29, 1980

Before: ANDERSON, ALARCON, and POOLE, Circuit Judges.

Rogers appeals from a district court order dismissing his action for lack of subject matter jurisdiction. Rogers alleged in his amended complaint that his constitutional rights were violated when the San Jose Mercury refused to publish his articles concerning a California initiative.

Governmental intrusion into the function of editors cannot be reconciled with the first amendment guarantee of a free press. Miami Heralo Publishing Co. v. Tornillo, 418 U.S. 241 (1974). Courts have consistently refused to overturn editorial decisions not to print material volunteered by the public. See, e.g., Mississippi Gay Alliance v. Goudelock, 536 F.2d 1073 (5th Cir. 1976), cert. denied, 430 U.S. 982 (1977); Avins v. Rutgers, the State University of New Jersey, 385 F.2d 151 (3rd Cir. 1967), cert. denied, 390 U.S. 920 (1968). Thus, Rogers' contention is foreclosed by prior decisions and the refusal to entertain jurisdiction was proper. See Oneida Indian Nation v. County

Memorandum, Affirmed District Court of Appeal Mar. 26, 1981
APPENDIX "A"

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ORIGINAL
FILED
JAN 31 1979
WILLIAM L. WHITTAKER
CLERK, U. S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

HAL M. ROGERS, Plaintiff, vs. LARRY JINKS, et al., Defendants.	No. C 78-1074 SW (SJ) ORDER OF DISMISSAL WITH PREJUDICE

This matter came on regularly for hearing on January 19, 1979, before the Honorable SPENCER WILLIAMS, Judge of the above-entitled Court located at 175 West Taylor, San Jose, California, LOUIS ONEAL appearing as attorney for defendants LARRY JINKS, P. ANTHONY RIDDER, SAN JOSE MERCURY and SAN JOSE NEWS, and plaintiff HAL. M. ROGERS appearing in propria persona. Upon the evidence, both oral and documentary, presented in this action, and upon the files and records in this matter, the Court concludes it lacks jurisdiction of the subject matter of this action, as follows:

1. This Court does not have jurisdiction of this action under 28 U.S.C. § 1332. Paragraph VII of the First Amended Complaint refers to 28 U.S.C. § 1332 and recites the general proposition that federal district courts have jurisdiction of civil actions between parties of diverse citizenship. However,

of Oneida, 414 U.S. 661, 666 (1974); Timberlane Lumber Co. v. Bank of American N.T. & S.A., 549 F.2d 597, 602 (9th Cir. 1976).

The district court properly rejected Rogers' claim of jurisdiction under 28 U.S.C. § 2201. The Declaratory Judgment Act is not a jurisdictional statute. Jarrett v. Resor, 426 F.2d 213, 216 (9th Cir. 1970).

AFFIRMED.

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APPENDIX B-1

TITLE 28 U.S.C. Section 1331 FEDERAL QUESTION; AMOUNT IN CONTROVERSY; COSTS

(a) The district court shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United State except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

(b) Except when a express provision thereof is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition may impose costs on the plaintiff.

APPENDIX B-2

TITLE 28, U.S.C. Section 1332 DIVERSITY OF CITIZENSHIP; AMOUNT IN CONTROVERSY; COSTS

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs and is between---

(1) Citizens of different States;

(2) Citizens of a State and citizens or subjects of a foreign State

(3) Citizens of different States and in which citizens

or subjects of a foreign State are additional parties; and

(4) A foreign State, defined in Section 1603(a) of this title, as plaintiff and citizens of a State or of different States

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this Section and Section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: Provided further, that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

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APPENDIX B-3

TITLE 28 U.S.C. Section 2201 CREATION OF A REMEDY

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under Section 7428 of the Internal Revenue Code of 1954, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

APPENDIX B-4

TITLE 28 U.S.C. Section 2202 FURTHER RELIEF

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

APPENDIX B-5

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RULE 57 FRCP DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to Title 28 U.S.C. Section 2201, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

APPENDIX B-6 ROGERS v. SAN JOSE MERCURY NEW

APPEAL FILED U.S. SUPREME COURT 9/8/81 Plaintiff's Opposition to Dismiss 7/3/

Mr. Larry Jinks, Executive Editor
SAN JOSE MERCURY-NEWS
750 Ridder Park Drive,
San Jose, California 95190

85 East San Fernando Street,
San Jose, California 95113
March 13th, 1978

Dear Mr. Jinks:

Since the first announcement in the paper that the Jarvis-Gann initiative had been placed on the ballot, there has been a continuing series of articles that have appeared almost daily in the SAN JOSE MERCURY and the SAN JOSE NEWS. Better than 95% of these articles have been "anti" Jarvis-Gann or Proposition 13th on the June 6th California primary ballot.

Since the "pro" side of this initiative enjoys approximately 5% coverage in the two papers that you supervise, I ask that "equal space" be provided on a per column inch basis to the proponents of the Jarvis-Gann initiative. This printed "equal space" to be provided by your writing staff or by the acceptance of material written by outside sources who are conversant with the initiative and the financing arrangements which would occur should this initiative pass.

I would appreciate a reply from you at your earliest convenience as to whether you and your papers would be willing to give the proponents of Proposition 13 "equal space" on a per column inch basis to define the merits of the Jarivs-Gann initiative.

Awaiting your reply, I remain,

Sincerely yours,

Hal M. Rogers

P.S. A partial listing of articles by date and page number;

2/8	14A	3/2	11-A
2/17	1-F	3/4	16-A
2/10	17-A	3/4	1
2/18	14-A	3/4	8-B
2/24	16-A	3/7	5-A
2/26	3-A	3/7	7-A
3/1	4-A	3/8	8-B
3/1	1-E	3/9	11-A

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EXHIBIT "A"

APPENDIX "B" Exhibit B-6 Letter from Appellant to L.Jinks
San Jose Mercury-News March 13,1978

APPEAL FILED U.S.SUPREME COURT 9/8/81 Plaintiff's Opposition to Dismiss 7/3/78

San Jose Mercury News

750 RIDDER PARK DRIVE, SAN JOSE, CALIFORNIA 95190 · (408) 289-5513

LARRY JINKS
Editor

March 14, 1978

Mr. Hal M. Rogers
85 East San Fernando Street
San Jose, California 95113

Dear Mr. Rogers:

I assume that you are characterizing as "anti Jarvis-Gann articles" all of those which quote public officials who have made statements about the effect of the amendment on their operations. Since it is our general policy to quote such officials on matters of clear public interest, I question the characterization.

As you must be aware, when we asked for opinions for our Saturday editorial forum, we gave heavy emphasis to letters in favor of the initiative. When prominent public figures have come out in favor of the initiative, such as former Chief Ed Davis of Los Angeles, we have printed that fact. We have printed comments of both Mr. Jarvis and Mr. Gann.

Also, our political editor, Dale Lane, has been asked to arrange for one of the sponsors of the initiative to appear before our editorial board to discuss the effects of the initiative.

We will be seeking to print legitimate news about the initiative as it develops. We will not be measuring column inches and certainly will not be accepting someone else's measurements.

I will particularly welcome hearing about any significant developments favorable to the amendment that you feel we have overlooked.

Sincerely,

(Signature visible original copy)

LJ/atn

EXHIBIT "B"

APPENDIX B Titled B-7 Letter from L.Jinks to Appellant 3/14/78

Best Copy Available

APPENDIX B-8

APPPEAL U.S. SUPREME COURT 9/8/81

Office of the Secretary of State
March Fong Eu

111 Capitol Mall
Sacramento, California 95814

CORPORATE DIVISION

Legal Review	(916) 445-0620
Certification	(916) 445-1430
Status	(916) 445-2900
Microfilm Records	(916) 445-1768
Name Availability	(916) 322-2387
Trademarks	(916) 445-9872
Statement of Officers	(916) 445-2020
Service of Process	(916) 445-0620
Los Angeles Office	(213) 620-3104

May 23, 1978

Taxpayers Unanimous
85 East San Fernando Street
San Jose, California 95113

This is in answer to your inquiry of May 11, 1978

The records of this office indicate that SAN JOSE MERCURY NEWS or KNIGHT-RIDDER PUBLICATIONS, INC.

- [X] Is not of record in this office as either a California domestic corporation or a foreign corporation.
- [ ] Is a California corporation incorporated
- [ ] Is in good standing
- [ ] Has its principal office in County.
- [ ] A statement as to the names and addresses of officers and address of principal office is on file in this office. A copy of the filed statement may be obtained for a fee of $1.00.
- [ ] A statement as to the names and addresses of agent, officers and directors and address of principal office is on file in this office. A copy of the filed statement may be obtained for a fee of $1.00.
- [ ] A statement as to names and addresses of officers and address of principal office has not been filed in this office.
- [ ] An agent for service of process has not been designated.
- [ ] Was suspended for not complying with statutory requirements. For further information, contact the Franchise Tax Board, Sacramento 95857.
- [ ] Was dissolved
- [ ] Was merged
- [ ] Its term of existence expired
- [ ] Is a corporation which has been qualified in California since
- [ ] Is in good standing.
- [ ] Agent for service of process:
- [ ] Surrendered its right to transact intrastate business in California
- [ ] Forfeited its right to transact business in California for not complying with statutory requirements. For further information, contact the Franchise Tax Board, Sacramento 95857.
- [ ] Foreign corporations are not required to file names and addresses of officers with this office.

March Fong Eu
Secretary of State

jmv/em

SEC/STATE FORM C1-1 (REV. 8-77)

Best Copy Available

APENDIX B Titled B-8 LETTER(form) Secretary of State(Cal to appellant March 23,1978

HAL M. ROGERS
385 Delmas Avenue,
San Jose, California 95126
Phone: (408) 292-6621
In Propria Persona

Best Copy Available

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

HAL M. ROGERS Plaintiff/Appellant, vs. LARRY JINKS, P. ANTHONY RIDDER, SAN JOSE MERCURY, SAN JOSE NEWS, ONE DOE, TWO DOE, THREE DOE, Defendants/Appellees.	D.C. No. C-78-1074-SW, SJ C.A. No. 79-4190 MOTION FOR STAY OF ORDER FRAP Rule 8 (A), (B)

Before: ANDERSON, ALARCON, and POOLE, Circuit Judges

The appellant moves as follows:

That this Court issue a Stay of Order rendered on July 6, 1981 in the above entitled case because appellant intends to file an appeal to the United States Supreme Court.

Hal M. Rogers

HAL M. ROGERS, In Propria Persona

NOTICE OF MOTION

TO: LARRY JINKS, P. ANTHONY RIDDER et al:

PLEASE TAKE NOTICE, that appellant hereby seeks a Stay of the Order issued by a three man panel of Judges, District Court of Appeals for the Ninth District.

DATED: July 16, 1981

BY: Hal M. Rogers
Hal M. Rogers In Propria Persona

HAL M. ROGERS
385 Delmas Avenue,
San Jose, California 95126
Phone: (408) 292-6621
In Propria Persona

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

HAL M. ROGERS Plaintiff/Appellant, vs. LARRY JINKS, P. ANTHONY RIDDER, SAN JOSE MERCURY, SAN JOSE NEWS, ONE DOE, TWO DOE, THREE DOE, Defendants/Appellees.	D.C. No. C-78-1074-SW, SJ C.A. No. 79-4190 AFFIDAVIT IN SUPPORT OF STAY OF ORDER

Before: ANDERSON, ALARCON, and POOLE, Circuit Judges

A stay is sought of the Order in question to enable appellant to seek possible counsel and to prepare an appeal to the United States Supreme Court.

This stay is conditioned upon the fact that surety bond for costs issued by the Firemans Fund Insurance Co., #SJR633860 is in effect and the annual premium has been paid. Expiration date is March 7, 1982.

That stay be granted under the provisions of Title 28, U.S.C. Section 2101(f).

VERIFICATION

I, Hal M. Rogers, do hereby certify under penalty of perjury that I have read the foregoing Motion and Affidavit In Support of Stay of Order and know the contents thereof, and that the same is true, except as to those matters which are therein stated upon information and belief, and that as to those matters, I believe it to be true.

Executed in San Jose, California this 16 day of July 1981.

Hal M. Rogers

Hal M. Rogers In Propria Persona

JUL 23 19

United States Court of Appeals

FOR THE NINTH CIRCUIT

FILED

JUL 27 1981

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

HAL M. ROGERS,

Plaintiff/Appellant,

vs.

LARRY JINKS, P. ANTHONY RIDDER, SAN JOSE MERCURY, SAN JOSE NEWS, ONE DOE, TWO DOE, THREE DOE,

Defendants/Appellees.

No. 79-4190
DC CV 78-1074 SMW

ORDER ON MOTION FOR STAY OF MANDATE
(Rule 41 (b) Fed.R.App.P.)

Upon due consideration of appellant motion for stay of the mandate of this Court in the above cause pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari, such petition to be filed in the Clerk's Office of the Supreme Court of the United States on or before August 16, 1981,

IT IS ORDERED that the motion for stay of mandate be, and the same is hereby granted

Arthur L. Alarcon
United States Circuit Judge
ALARCON

*In the event that the motion for stay of mandate and the petition for writ of certiorari are granted, then this stay will continue pending the final disposition of the case by the Supreme Court of the United States.

CA9-003 (12/3/79)

STAY OF MANDATE, Court of Appeals Granted July 27, 191
APPENDIX C

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED
DEC 12 1978
WILLIAM L. WHITTAKER
CLERK, U. S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CASE NO. C 78-1074 SW

ORDER SETTING STATUS CONFERENCE

This action having been assigned to JUDGE SPENCER WILLIAMS,

IT IS ORDERED that a status conference will be held in the United States District Courthouse in San Francisco on

TUESDAY, Jan. 19, 1973 at ~~9:30 a.m.~~ 3:00 PM in Courtroom 2 IN SAN JOSE

THIS CONFERENCE WILL NOT BE CONTINUED BY STIPULATION OR OTHERWISE.

The parties shall appear in person or through their counsel and shall be prepared to discuss the future course of the litigation, including, but not limited to, all matters covered in Local Rule 235-3(a)-(i). A written statement need not be prepared.

At the conclusion of the conference, appropriate orders will be entered setting dates for a pretrial conference, close of discovery, and trial, and otherwise regulating and controlling future proceedings in the case. Counsel unable to appear, must file a Certificate with the court not less than seven (7) calendar days prior to the above date stating why an appearance is impossible. Dates will be set regardless of non-appearance.

FAILURE TO APPEAR AT THE STATUS CONFERENCE WITHOUT HAVING FILED A CERTIFICATE OF NON-APPEARANCE WILL RESULT IN IMPOSITION OF THE FOLLOWIN SANCTIONS: AS TO PLAINTIFF, DISMISSAL; AS TO DEFENDANT, ENTRY OF DEFAULT JUDGMENT.

In addition to strict compliance with the Federal Rules of Civil Procedure and the Local Rules of the Northern District of California, counsel must also:

1. Afford the opposite party(ies) the broadest possible discovery consistent with any reasonable theory of relevance.

2. Prior to the status conference, limit their interrogatories to twenty (20) questions (including subsections) which shall be specifically directed to a) securing the names, location and probable testimony of witnesses, b) the existence, location and general description of relevant documents and other physical evidence, and c) information concerning the transaction(s) upon which the claims for relief are based. Broadly generalized, boilerplate interrogatories will not be permitted. Authorization for further interrogatories shall be discussed at the status conference.

PLAINTIFF WILL SERVE COPIES OF THIS ORDER AT ONCE UPON ALL PARTIES TO THIS ACTION AND UPON THOSE SUBSEQUENTLY JOINED IN ACCORDANCE WITH TH PROVISIONS OF FEDERAL RULES OF CIVIL PROCEDURE 4 AND 5 AND FILE A CERTIFICATE REFLECTING SUCH SERVICE WITH THE CLERK OF THE COURT.

Best Copy Available

Spencer Williams

CASES BEFORE THE HONORABLE SPENCER WILLIAMS

In cases of San Francisco venue, the LAW AND MOTION calendar is heard every Friday morning at 10:00 am. Notice of Motions must be served upon opposing counsel at least 21 days prior to the date for hearing.

In cases of San Jose venue, the Criminal Calendar is heard every first and third Friday of the month at 2:00 pm in San Jose. The Civil Calendar is heard every first and third Friday also, at 3:00 pm in San Jose.

Status Conferences are held on Tuesdays in San Francisco cases, at 9:00 am. Such conferences cannot be continued or reset for any reason. Should appearance at Status Conference be impossible, counsel must file a Certificate of Counsel at least seven days prior to the date set for Conference. The Conference will proceed as calendared with the parties able to attend. Failure to make Service of the Complaint or lack of defendant's Answer are not deemed sufficient cause to vacate or reset a Status Conference.

The Court requests that all inquiries be addressed to the deputy clerk, Pascal Redburn, in writing rather than by telephone.

Stipulations to continue a Noticed Motion on Judge Williams' calendar must be recieved by the Court not less than seven days prior to the date originally set for the hearing.

Best Copy Available

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CASE NO. C-78-1074 WAI SJ

FILED

NOV 21 1978

Hal Rogers vs Larry Jinks

WILLIAM L. WHITTAKER, CLERK

REASSIGNMENT ORDER

Good cause appearing therefor,

IT IS ORDERED that this case is reassigned to HONORABLE SPENCER WILLIAMS, SAN JOSE DIVISION for all further proceedings.

Counsel are instructed that all future filings shall bear the initials SW, SJ immediately after the case number

ALL MATTERS PRESENTLY SCHEDULED FOR HEARING ARE VACATED AND SHOULD BE RENOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THE CASE HAS BEEN REASSIGNED.

DATE: ~~2[illegible] 1978~~ 21 NOV 1978

FOR THE ASSIGNMENT COMMITTEE:

CHIEF JUDGE

APPENDIX C MATTERS VACATED REASSIGNMENT ORDER Nov. 21,1978

NEW CASE FILE CLERK:

Copies to: Courtroom Deputies
Special Projects
Log Book Noted
~~Ballots Replaced in Category I~~
Reassignment log noted SW

CASE SYSTEM ADMINISTRATOR:

Copies to: All Counsel

Best Copy Available

BAKER, ONEAL, CENTER, LUCKHARDT,
HARLAIS, LUND & HINSHAW
FIRST NATIONAL BANK BUILDING
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 293-0463

ATTORNEYS FOR Defendants,
Larry Jinks, P. Anthony Ridder,
San Jose Mercury News, San Jose News

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HAL M. ROGERS, Plaintiff, vs. LARRY JINKS, P. ANTHONY RIDDER, SAN JOSE MERCURY, SAN JOSE NEWS, ONE DOE, TWO DOE, THREE DOE, Defendants.	NO. C-78-1074 WAI ORDER

This matter having come on regularly for hearing on August 11, 1978 before the HONORABLE WILLIAM A. INGRAM, Judge of the United States District Court, Plaintiff, HAL M. ROGERS, appearing In Propria Persona, and LOUIS ONEAL, Esquire, appearing on behalf of Defendants, good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss is granted and Plaintiff shall have thirty (30) days leave to amend his complaint to assert jurisdictional grounds.

DATED: _____

WILLIAM A. INGRAM

UNITED STATES DISTRICT COURT JUDGE

plaintiff does not make any allegations, either in his papers or orally, that he and the defendants in this action are of diverse citizenship within the meaning of 28 U.S.C. § 1332(a).

2. This Court does not have jurisdiction of this action under 28 U.S.C. § 1331. The claims asserted under the First and Fourteenth Amendments of the United States Constitution are legally "wholly insubstantial and frivolous." Bell v. Hood, 327 U.S. 678, 682-83 (1946). See also Hagans v. Lavine, 415 U.S 528, 542-43 (1974).

3. This Court does not have jurisdiction of this action under 28 U.S.C. § 2201. Section 2201 "does not establish a new basis for jurisdiction in the federal courts; it merely establishes a new remedy, available in cases in which jurisdiction otherwise exists." Lear Siegler, Inc. v. Adkins, 330 F.2d 595, 599 (9th Cir. 1964). Jurisdiction does not otherwise exist in the present case.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-captioned matter be dismissed with prejudice for lack of subject matter jurisdiction.

Dated: JAN 31 1979

UNITED STATES DISTRICT JUDGE

FILED

JUL 6 1981

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAL M. ROGERS, Plaintiff/Appellant vs. LARRY JINKS, P. ANTHONY RIDDER SAN JOSE MERCURY, SAN JOSE NEWS, et al	D.C. No. C 78-1074-SW C.A. No. 79-4190 O R D E R

Before: ANDERSON, ALARCON, and POOLE, Circuit Judges

Appellant's petition for rehearing is denied.

APPENDIX E. ORDER Court of Appeals Rehearing Denied July 6,1981

HAL M. ROGERS
385 Delmas Avenue,
San Jose, California 95126
Phone: (408) 292-6621

In Propria Persona

RECEIVED
RICHARD H. DEANE
CLERK U.S. COURT OF APPEALS

AUG 7 1981

FILED 8/7/81
DOCKETED DATE INITIAL

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAL M. ROGERS Plaintiff/Appellant, vs. LARRY JINKS, P. ANTHONY RIDDER, SAN JOSE MERCURY, SAN JOSE NEWS, ONE DOE, TWO DOE, THREE DOE, Defendants/Appellees.	C.A. No. 79-4190 S. Ct. Rule 10

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

NOTICE is hereby given that Hal M. Rogers, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final Order of the Court of Appeals denying appellant's petition for rehearing in this suit dated July 6, 1981.

This appeal is taken pursuant to Title 28, United States Code, Section 1253, (direct appeals from decisions of 3 judge courts) 26 L. Ed 2d 947.

Dated: August 6, 1981

Hal M. Rogers
Hal M. Rogers,
In Propria Persona
San Jose, California

NOTICE OF APPELA TO THE SUPREME COURT OF THE UNITED STATES
FILED IN THE DISCTRICT COURT OF APPEAL August 7,1981

AFFIDAVIT OF SERVICE - SERVICE BY MAIL

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

I, Hal M. Rogers, deposes and say that I am the appellant and that on September 8, 1981, pursuant to Rule 33(3)(c), Rules of the Supreme Court, I served a copy of the attached, pursuant to Rule 28(3) Rules of the Supreme Court

APPENDICES

on counsel of record for the appellees by mailing this copy in a duly addressed envelope with first class postage prepaid to LOUIS ONEAL, counsel for the appellees to his office at,

Rankin, Oneal, Center, Luckhardt
Marlais, Lund & Hinshaw
First National Bank Building,
2 West Santa Clara St.
San Jose, California 95113

I further certify, under penalty of perjury, that the foregoing statement is true and correct.

Hal M. Rogers

RECEIVED
RICHARD H. DEANE
CLERK U.S. COURT OF APPEALS
AUG 20 1981
FILED
DOCKETED
DATE
INITIAL

HAL M. ROGERS
385 Delmas Avenue
San Jose, California 95126
Phone: (408) 292-6621

In Propria Persona

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAL M. ROGERS

Plaintiff/Appellant,

vs.

LARRY JINKS, P. ANTHONY RIDDER, SAN JOSE MERCURY, SAN JOSE NEWS, ONE DOE, TWO DOE, THREE DOE,

Defendants/Appellees.

C-78-1074-SW SJ
C.A. No. 79-4190

MOTION TO CORRECT ERROR
Rule 15 FRCP

The appellant moves the Court as follows:

That a correction be entered in the Notice of Appeal to the Supreme Court of the United States dated August 7, 1981.

That Lines 23 to 25 inclusive be deleted and a new paragraph inserted to read as follows:

That a direct appeal is taken pursuant to Title 28, United States Code, Section 1254(2), that shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to federal questions presented.

August 18, 1981
Date

Hal M. Rogers
Hal M. Rogers
In Propria Persona
San Jose, California 95126

APPENDIX F MOTION FOR CORRECTION OF ERROR TO NOTICE OF APPEAL TO THE SUPRME COURT OF THE UNITED DTATES to Court of Appeals Dated August 20th, 1981